IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 231 (S/B) of 2006

Ravindra Singh Nayal,
Aged about 58 years,
S/o Sri I.S. Nayal,
Presently posted as Commandant,
PAC, Rudrapur,
District – Udham Singh Nagar. **….Petitioner.**

Versus

1. State of Uttaranchal through Principal Secretary, Home Department, Civil Secretariat, Dehradun.
2. Director General of Police, Uttaranchal, Dehradun.
3. State of Uttar Pradesh through Principal Secretary, Home Department, U.P. Civil Secretariat, Lucknow.

…..Respondents.

Coram:
Hon'ble M.M. Ghildiyal, J
Hon'ble Rajesh Tandon, J
(PC)

Heard Sri Paresh Tripathi, learned counsel for the petitioner, learned standing counsel for State of Uttaranchal on behalf of respondents no. 1 and 2 and Smt. Beena Pandey, learned Standing counsel for State of Uttar Pradesh on behalf of respondent no. 3.

By means of this writ petition, petitioner has prayed for a writ in the nature of Mandamus commanding the respondent no. 1 to take into account the Army Service rendered by the petitioner for re-fixing his seniority in the police department in accordance with the judgement rendered by this Hon'ble Court in WP No. 50 (SB) of 2005 [T.P. Kundaliya Vs. State and another] decided on 04.07.2005.

Brief facts as narrated in the writ petition are that petitioner was selected to the Short Service (Non Technical) Course on 08.12.1967 after qualifying the written examination and interview and after completion of the training the petitioner was commissioned on 12.10.1969 and after completing 10 years service the petitioner was discharged from Indian Army on 09.04.1979. After being discharged from the Indian Army the petitioner joined the police department in the State of U.P. on 14.01.1983.

Petitioner has submitted various representations before respondents for re-fixing his seniority in the police department by counting his services rendered by him in the Indian Army.

Paragraphs 12 and 13 of the writ petition are quoted as under:

> 12. *That it is worth mentioning here that the petitioner of the aforesaid Writ Petition No. 50 (SB) of 2005 namely Sri T.P. Kundaliya was recruited to the short service (non technical) course of the Indian Army and joined on 21.08.1967 for training and after completion of training was commissioned as an officer of Indian Army on 23.06.1968 and was retrenched / discharged from Indian Army on 09.04.1976 whereas the petitioner was selected to short service (non technical) course of Indian Army on 08.12.1967 and after completing the training was commissioned as an officer of Indian Army on 12.01.1969 and was retrenched / discharged from India Army on 09.04.1979.*

13. *That in view of the aforesaid it is evident that the case of the petitioner stands on the same footing with the case of the petitioner of W.P. NO. 50 / 2005 and consequently, the petitioner also deserves to be extended the benefit of the said judgement in as much as the service rendered by the petitioner in Indian Army deserves to be taken into account while fixing the seniority of the petitioner in the department but in a most discriminatory and arbitrary manner the case of the petitioner is not being considered in the light of the judgement and order dated 04.07.2005 passed by this Hon'ble Court in W.P. No. (SB) of 2005.*

Counter affidavit has been filed by respondents. and In paras 10 and 11 of the counter affidavit respondents have replied paragraphs 12 and 13 of the writ petition. Para 10 and 11 of the counter affidavit are quoted as under:

10. *That the contents of para 12 of the writ petition need no comments.*

11. *That the contents of para 13 of the writ petition, it is submitted that the judgement passed in Writ Petition No. 50 (SB) of 2005, was judgement in persona not a judgement in rem, hence, the petitioner cannot claim parity, hence, the relief of that writ petition cannot be extended to the petitioner.*

The petitioner has claimed benefit of judgment passed by this Hon'ble Court in writ petition no. 50 (SB) of 2005 (T.P. Kundaliya Vs. State of Uttaranchal and others) as according to the petitioner his case is squarely covered by the

decision of this court in the case of "T.P. Kundaliya Vs. State of Uttaranchal and another"

We have perused the judgement passed by Division Bench of this Court in Writ Petition No. 50 (SB) of 2005 (T.P. Kundaliya Vs. State of Uttaranchal and another). Paragraphs 7 to 9 of the aforesaid judgment are quoted as under:

> 7. *The first respondent has no case that the petitioner's case in not similar to that of Jitendra Nath, respondent in Civil Appeal Nos. 837 of 1995 before the Supreme Court. The only contention is that the benefit of the order of the Supreme Court in Civil Appeal No. 837 and 838 of 1995 (Annexure 7 to the writ petition) can be claimed only by the said Jitendra Nath. However, when the petitioner's case is admittedly similar to that of Jitendra Nath and when the petitioner claims the same benefit which was extended to Sri Jitendra Nath, there is no reason why the petitioner should be treated differently from the said Jitendra Nath. In our view, since the case of the petitioner is similar to the case of Sri Jitendra Nath whose claim was upheld by the Hon'ble Supreme Court, the petitioner also is entitled to the benefit extended to Sri Jitendra Nath. In this view of the matter Annexure 11 order is liable to be quashed and the first respondent is liable to be directed to extend to the petitioner the benefit extended to Sri Jitendra Nath and to take into account the Army service rendered by the petitioner for fixing his seniority in the Transport Department.*

8. *Mr. B.D.Kandpal, learned Standing Counsel for the first respondent submitted that unless the judgment of the Supreme Court in Civil Appeal No. 358 of 1994 filed by the State of Uttar Pradesh against the judgment of the High Court of Allahabad in Writ Petition No. 29711 of 1992 filed by the petitioner, is not reviewed, the petitioner cannot be granted the relief sought in this writ petition. We do not find any merit in this contention. In the judgment of the Supreme Court in Civil Appeal No. 358 of 1994, the only issue considered and decided was whether the classification between the officers, who were commissioned prior to 10th January, 1968 and after 10th January, 1968 was discriminatory or not. The question whether an officer who had joined the training prior to 10th January, 1968 and on successful completion of the training was commissioned after 10th of January, 1968 is entitled to the benefit under the Rules, was not considered or decided by the High Court or the Supreme Court in the earlier case. The above question was considered and decided by the High Court and the Supreme Court only in Jitendra Nath's case. In Jitendra Nath's case, both High Court of Allahabad and the Supreme Court of India held that an officer who had joined the training prior to 10th January, 1968 and on successful completion of training was commissioned after 10th January, 1968 is entitled to the benefit under the Rules. Hence, the judgment of the Supreme Court in Civil Appeal No. 358 of 1994 does not stand in the way of allowing the prayer in this writ petition.*

9. *In the above circumstances, the writ petition is allowed. Annexure 11 order is quashed. The first respondent is directed to take into account the Army service rendered by the petitioner in fixing his seniority in the Transport Department of the first respondent. The first respondent shall reconsider Annexure 9 representation of the petitioner and pass fresh orders in the light of the above directions as expeditiously as possible and at any rate within a period of two months from the date of the receipt of a copy of this judgment."*

Hon'ble Supreme Court while dismissing the Civil Appeal Nos. 837 and 838 of 1995 filed by the State of Uttar Pradesh held that Sri Jitendra Nath who joined the Army for training on 17.08.1967 and was commissioned only on 23.06.1968 was entitled to the benefits as he was undergoing training w.e.f. 17.08.1967. Considering the effect of Rule 3 of the above-mentioned Rules and the need for undergoing actual training before the commissioning of officers, the Supreme Court held that officers like Jitendra Nath also are entitled to the benefit of the Rules.

According to the petitioner, he was selected in the Indian Army and was sent for training on 08.12.1967 and thereafter, had been commissioned as Officer on 12.01.1969. The aforesaid controversy has also been dealt with the Division Bench of this High Court in Writ Petition No. 50 (SB) of 2005 [T.P. Kundaliya Vs. State and another] decided on 04.07.2005.

It is disputed by the respondents that the case of the petitioner is similar to the case of T. P. Kundaliya,

petitioner in writ petitin no. 50 (SB) of 2005 decided by this court, as such, he is entitle for the same relief.

In view of the above, writ petition deserves to be allowed. Writ Petition is allowed. Service rendered by the petitioner in Indian Army shall be taken into consideration for fixing the seniority in the Police Department within a period of two months from the date of receipt of copy of this judgement. Interim relief application no. 113457 of 2006 is disposed of accordingly. No order as to costs.

(Rajesh Tandon, J) **(M.M. Ghildiyal, J)**

November 4, 2006
SKSharma